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ALEXANDER L. STEVAS,

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NO. 82-1745

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

KATHERINE MARIE PASCOE,
Appellant

v.

I. KUEHNAST,
Appellee

On Appeal From The Supreme Court of Texas

MOTION TO DISMISS OR AFFIRM

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I

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MOTION TO DISMISS OR AFFIRM

The Appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the Judgment of the Supreme Court of Texas on the grounds that the Judgment of the Texas Courts rests on an adequate non-federal basis.

I.**THE STATE STATUTE INVOLVED
IN THE NATURE OF THE CASE**

At all times relevant to the instant case, Article 3996 V.A.C.S. Texas provided:

"Every gift, conveyance, assignment, or transfer of . . . any estate real or personal . . . given with intent to delay, hinder, or defraud . . . other persons of or from what they are or may be lawfully entitled to, shall, as to such . . . other persons, their representatives, or assigns be void. This Article shall not effect the title of a purchaser, for valuable consideration, unless it appears that he had notice of the fraudulent intent of his immediate grantor, or the fraud rendering void the title of such grantor."

B. THE PROCEEDINGS BELOW

For clarity, Appellee will adopt the Appellant's method of identifying the pertinent parties.

In addition to the facts contained in Appellant's Statement of the Case, it should be pointed out that Pascoe was aware of the pending divorce, was present at the divorce hearing, and was possibly present at the property division hearing.

In order to effectuate the decision to convey the Waco property to Pascoe, Maxine came to Waco, Texas, in March of 1965. On March 26, 1965, Maxine caused the Warranty Deed purporting to convey the property to Pascoe to be prepared, executed and placed of record. All acts necessary to convey title to the Texas land were performed within the State of Texas.

At the trial of the cause in the 74th Judicial District of McLennan County, Texas, the Jury found: (1) Maxine, by her execution and delivery of the Deed to the Waco property, intended to defraud Irving of his present or potential interest in the Texas property; (2) Maxine intended to delay or hinder Irving from obtaining the Waco property; and, (3) Pascoe knew of Maxine's fraudulent intent at the time Pascoe received the Deed to the Waco property.

II.

ARGUMENT

The Courts of Texas have recognized that a spouse with an interest in community property is embraced by the phrase "or other person" contained in Article 3996 V.A.C.S. *Biccochi v. Casey - Swasey Co.*, 42 S.W. 963 (Tex. 1897). Additionally, our Courts will enforce foreign divorce decrees awarding the interest of one spouse in Texas property to the other spouse. *McElreath v. McElreath*, 345 S.W.2d 722 (Tex. 1961).

Thus, even if Appellant were correct in his premise that Maxine's Deed effectively conveyed her one-half (1/2) interest to the Texas property to Pascoe, Irving is still entitled to recover that interest from Pascoe in light of Pascoe's knowledge of and participation in the scheme to fraudulently deprive Irving of any interest which he then had or which might have been awarded by the Iowa Court. As there is adequate and independent State ground of recovery, this case should not be reviewed by the Supreme Court of the United States. *Herb v. Pitcairn*, 1945, 65 S.Ct. 459, 324 U.S. 117, 87 L.Ed. 789.

CONCLUSION

For the foregoing reason, the Appeal should be dismissed or the Judgment of the Court below affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Dismiss or Affirm has been mailed to each of Mr. David B. Kultgen, P. O. Box 529, Waco, Texas 76703, and Honorable Jim Mattox, Attorney General of Texas, Supreme Court Building, P. O. Box 12548, Austin, Texas 78711, by certified mail, return receipt requested, on this _____ day of _____, 1983.

Original Signed by:
James O. Terrell

JAMES O. TERRELL